

RULEMAKING NOTICE

Notice Number	Rule Number	Env-A 618.01,618.02, & 618.04; Env-A 619.03 & 619.07; Env-A 621.04
1. Agency Name & Address: NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: 3. Federal Authority: 4. Type of Action:	RSA 125-C:4, I(d)-(h) & (j) 42 U.S.C. §§7410(a)(2)(C) & 7661a., 40 CFR 70 _____ _____ _____ _____ X

5. Short Title: Nonattainment New Source Review and Prevention of Significant Deterioration Amendments

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules in Env-A 600 implement RSA 125-C, the *Air Pollution Control Act*, by establishing a system for permitting the construction, operation, and modification of certain sources of air pollution emissions, in order to achieve and maintain the ambient air quality standards established in Env-A 300 (pursuant to RSA 125-C:4, I(b)) and the ambient air limits for regulated toxic air pollutants established in Env-A 1400 (pursuant to RSA 125-I:6).

DES adopted revisions to Env-A 600, *Statewide Permit System*, effective September 1, 2012. After the rules were adopted DES submitted a request to the United States Environmental Protection Agency (EPA) to include the amended Env-A 600 into New Hampshire's State Implementation Plan (SIP). EPA conditionally approved Env-A 600 provided that certain amendments were made to Env-A 618, *Nonattainment New Source Review* [NA-NSR], and Env-A 619, *Prevention of Significant Deterioration* [PSD].

Env-A 618 is proposed to be amended to incorporate three provisions requested by EPA to satisfy the requirements of the conditional approval. Specifically, EPA's conditional approval required DES to incorporate (1) the requirements in 40 CFR 51.165(a)(6) applicable to projects at major stationary sources that are not major modifications but still have a "reasonable possibility" of resulting in a significant emission increase (Env-A 618.02(c)); (2) the requirements in 40 CFR 51.165(a)(5)(i) that approval to construct shall not relieve any owner or operator of the responsibility to otherwise comply with the rules or local, state or federal law (Env-A 618.04(b)), and (3) the requirements in 40 CFR 51.165(a)(7) that certain records be made available by DES or the public, upon request.

Amendments are also proposed to Env-A 619.03 to make the rules consistent with current federal requirements. EPA requires the rules to incorporate by reference the definitions of "potential to emit" and "allowable emissions", as those terms are defined in 40 CFR 52.21, into the State Implementation Plan. Currently, those definitions are incorporated by reference in Env-A 619.03(a). However, the existing rules modify those definitions in Env-A 619.03(c)(2) and (c)(3). The rules are proposed to be amended to comply with the federal requirements by deleting the provisions that modify those definitions.

The existing rules incorporate by reference federal requirements for fine particle (PM_{2.5}) pollution promulgated by EPA on October 20, 2010. Env-A 619 is proposed to be amended to incorporate the most recent federal prevention of significant deterioration (PSD) requirements, dated July 1, 2016. EPA's conditional approval also requires the rules to incorporate terms consistent with 40 CFR 51.166(q)(2)(iv), requiring DES to provide notice of a draft PSD permit to other states and tribal lands whose lands may be affected by emissions from the permitted source. Env-A 621.04(e), on applications subject to nonattainment requirements, is proposed to be amended to incorporate this requirement.

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6. (b) Brief description of the groups affected:

The proposed amendments to Env-A 618 affect owners and operators of major stationary sources or modifications that are major for (1) a pollutant for which the area in which the source is or would be located is designated nonattainment under 40 CFR §81.330; or (2) NO_x or VOC if the source is or would be located in the Northeast Ozone Transport Region (OTR), as defined in Env-A 618.03(b)(3).

The proposed amendments to Env-619 and Env-A 621 affect owners or operators of major stationary sources or major modifications for a source located in an area designated as attainment or unclassifiable under §107(d)(1)(B) of the Clean Air Act for which the regulated NSR pollutant is subject to regulation.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	Specific State Statute or Federal Statute/Regulation Implemented
Env-A 618.01	RSA 125-C:11, I; 42 U.S.C. §7502(c); 40 CFR §51.165
Env-A 618.02	RSA 125-C:11, IV; 42 U.S.C. §7502(c)(5); 40 CFR §51.165(a)(2)
Env-A 618.04	RSA 125-C:11, IV; 42 U.S.C. §7503(a); 40 CFR §51.165(a)(2)
Env-A 619.03	RSA 125-C:4, I(d); RSA 125-C:6, XIV; RSA 125-C:11, IV; 42 U.S.C. §7410(a)(2)(C); 40 CFR § 51.166; 40 CFR 52.21
Env-A 619.07	RSA 125-C4, I(j); 42 U.S.C. §7475(d); 40 CFR §52.21(g)(1)
Env-A 621.04	RSA 125-C:12, II

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

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The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-
800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, September 16, 2016**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, September 9, 2016 at 10:00 AM**

Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS #16:151, dated 08/01/2016:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

Title V of the Federal Clean Air Act requires states to adopt an operating permit program for major sources of air pollution emissions. The state regulations are found in Env-A 609, 612, and 618. If the state fails to adopt or readopt the rules, the EPA has authority to implement and enforce its own program in place of the state programs and order federal transportation funds to be withheld from the state.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules apply to owners or operators of major sources or major modifications that are required by RSA 125-C to have a permit. There are no political subdivisions that own or operate a major source or device required by RSA 125-C to have a permit. The rules do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures, and so do not violate Part I, Article 28-a of the N.H. Constitution.